

recovery for the improper installation or maintenance is limited to a refund of its payment to ASI – regardless of the revenues that the CLEC loses or the damage to its reputation that the CLEC incurs. This is clearly unreasonable.

36. In addition, SWBT has improperly attempted to limit ASI's obligation to provide nondiscriminatory access to operations support systems.²² In view of SWBT's retail offering of DSL Transport, SWBT is required to provide CLECs with nondiscriminatory access to its OSS with respect to the same service, both as part of its resale obligations under Section 251(c)(4) and as part of its duty to provide unbundled network elements on nondiscriminatory terms under Section 251(c)(3).²³ SWBT, however, does not provide nondiscriminatory access to its own OSS. Instead, CLECs are given access only to *ASI's* OSS – a completely different OSS that SWBT itself describes as “extremely limited.” *Habeeb Aff.*, ¶ 50. Furthermore, DSL Transport is the only advanced service resold by ASI for which ASI provides fully mechanized pre-ordering and ordering capabilities – and, in order to take advantage of those capabilities, CLECs must build interfaces entirely separate from those that they (and ASI) use to order services from SWBT itself.²⁴ This requirement is both discriminatory and needlessly

²² Although SWBT admits that ASI is subject to the obligation of Section 251(c)(3) that it provide nondiscriminatory access to unbundled network elements, it asserts that ASI's obligation “should be limited,” because packet switching and OSS are the only UNEs that ASI “owns.” See *Habeeb Aff.*, ¶¶ 47, 52. In fact, the Logix agreement addresses only a few of the UNEs that, under the Commission's rulings, ILECs are required to provide under Section 251(c). See, e.g., Logix Agreement, Sections 27, 29 (discussing OSS and unbundled packet switching).

²³ See *Local Competition Order*, ¶ 525; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd. 20543 (“*Ameritech Michigan Order*”), ¶ 130.

²⁴ See *Habeeb Aff.*, ¶¶ 56-59 (describing the interfaces used by ASI to submit transactions to SWBT); ¶ 57 (stating that ASI “will provide CLECs the option of accessing ASI's CPSOS system [which] will allow carriers to place preorder and order preorder and order transactions electronically” for resale of DSL Transport, and that ASI will provide CLECs with “a package of training materials that ISPs use to learn how to interface with CPSOS”). The Logix Agreement provides that the non-DSL services that ASI will make available for resale under the agreement must be ordered manually, through a telephone call to its Local Service Center or an access service request manual form. Logix Agreement, Sections 18, 20A.

burdensome on a CLEC. SWBT must provide resale services and unbundled network elements owned by itself and by its affiliate over one set of OSS.

37. SWBT asserts that ASI's obligation to provide nondiscriminatory access to OSS is "extremely limited" because of: (1) the "minimal" number of ASI customers available for resale, (2) the "unique nature" of most of ASI's services, (3) the "extremely limited" OSS that ASI uses; and (4) the absence of any need for CLECs to use ASI's OSS for interconnection with ASI's network. *Habeeb Aff.*, ¶¶ 50-54. SWBT's interpretation of ASI's OSS obligations, however, is inconsistent with the *ASCENT* decision, which states that ASI is fully subject to the requirements of Section 251(c) – which has been interpreted by the Commission as requiring the provision of nondiscriminatory access to OSS as an unbundled network element. SWBT, in fact, cites no legal authority to support its position that ASI's OSS obligations are "extremely limited." To the contrary, the Commission held in the *Local Competition Order* that OSS is an unbundled network element to which an ILEC must provide nondiscriminatory access under Section 251(c).²⁵ In any event, SWBT's limited offering of electronic access to ASI's OSS is clearly discriminatory, since SWBT does not assert that orders from ASI customers for services other than DSL Transport are subject to the same degree of manual intervention that will occur when a reseller orders the same service.

III. SWBT HAS NOT COMPLIED WITH ITS OBLIGATION TO PROVIDE LINE SHARING TO CLECs OVER HYBRID FIBER/COPPER LOOPS.

A. SWBT Is Currently Obligated to Provide End-to-End Line Sharing to CLECs Over Hybrid Fiber/Copper Loops.

38. The Commission has ruled that the ILECs' statutory obligation to provide access to unbundled network elements includes the duty to furnish line sharing on both standard

²⁵ See *Local Competition Order*, ¶¶ 516-528. The Commission recently reaffirmed its decision to require the unbundling of OSS as a UNE in its *UNE Remand Order*. See *UNE Remand Order*, ¶¶ 433-437.

copper and fiber-fed DLC configured loops.²⁶ In addition, the Commission held that the requirement to provide line sharing, as established in the *Line Sharing Order*, entitles CLECs to access line-shared loops at the central office if they choose, “*even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal).*” *Id.* (emphasis added).

39. AT&T has requested that SWBT provide line sharing as a UNE from the customer premises to the central office, regardless of whether the loop is configured over copper or fiber-fed DLC equipped loops.²⁷ SWBT, however, does not provide access to line sharing over hybrid fiber/copper loops at the central office as set forth in the *Line Sharing Reconsideration Order*. In fact, SWBT’s Application indicates explicitly that SWBT does *not* support end-to-end line sharing over such loops. *See* Application at 112-113 (“SWBT allows CLECs to provide data service to SWBT voice customers served via DLC because it both unbundles the HFPL and provides access to the high-frequency portion of the copper distribution facilities. The obligations set forth in the *Line Sharing Reconsideration Order* extend no further”). Moreover, an amendment to the M2A submitted as part of SWBT’s Application provides that the “High Frequency Portion of the Loop” (“HFPL”) is defined as “the frequency above the voice band on a *copper loop facility* that is being used to carry traditional POTS analog circuit-switched voice band transmissions.” *See, e.g.,* Sparks MO Aff., Att. C, Optional Line Sharing Amendment, § 2.4 (emphasis added). In the *Line Sharing Reconsideration Order*, however, the Commission stated that it did not intend to limit an ILEC’s obligation to provide CLECs with access to line-shared loops at the central office by using the word “copper” in the

²⁶ *Line Sharing Reconsideration Order*, ¶ 10.

²⁷ *In the Matter of the Determination of Prices, Terms, and Conditions of Line-Splitting and Line-Sharing*, MOPSC Case No. TO-2001-440, Direct Testimony of Scott Finney, pp. 25 *et seq.* (May 1, 2001); Hearing Tr., at 522-23 (“MOPSC Hearing Tr.”).

rules implementing the *Line Sharing Order*.²⁸ Accordingly, SWBT's restrictive definition of line sharing is inconsistent with the *Line Sharing Reconsideration Order*, because it would effectively eliminate SWBT's obligation to provide line sharing to communities that are served by a combination of fiber and copper facilities.²⁹

40. SWBT's restrictive definition of line sharing over hybrid fiber/copper loops is premised largely, if not entirely, upon its attempt to expand a minor exemption in the Commission's unbundling rules in a way that undermines a broader and more important rule. Specifically, SWBT has attempted to extend an exemption for stand-alone packet switching into a license to decline to provide access to the loop -- the connection between central office and customer premises. *See* Application at 113-114. The network elements that are relevant to the Project Pronto debate are not packet switches but loops and subloops, which the Commission found to be the "most time-consuming and expensive network element[s] to duplicate on a pervasive scale." *UNE Remand Order*, ¶ 211. Alternatively, to the extent that the *UNE Remand Order*'s treatment of packet switching is relevant at all, it is the exception to the exemption -- for packet switching at the remote terminal -- that governs. (As discussed below, the criteria which compel the provision of unbundled packet switching are fully satisfied in the Project Pronto architecture.)

41. In the *Line Sharing Order*,³⁰ the Commission made plain its intention to assist companies that wish to use unbundled network elements to compete with ILECs in the

²⁸ *Line Sharing Reconsideration Order*, ¶ 10. The Commission also indicated that the use of the phrase "transmission facility" in the definition of the local loop, "rather than [the term] 'copper' or 'fiber,' [was] intended to ensure that th[e] definition was technology-neutral." *Id.*

²⁹ *See id.*; *see also* letter from The Honorable Terry S. Harvill (Commissioner, Illinois Commerce Commission) to the Honorable J. Dennis Hastert, dated March 29, 2001.

³⁰ *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, ¶ 30 (rel. Dec 9, 1999) (emphasis added) ("*Line Sharing Order*").

provision of advanced services. There, the Commission created a new element that is clearly a “loop obligation”, requiring ILECs to provide requesting carriers with line sharing, or access to the “high-frequency portion of the loop” on lines where the incumbent provides the voice service. The *spirit and intent* of the line sharing obligation is, and has always been, to provide CLECs access to an ILEC’s local loop in order to spare consumers from the extra, needless costs of leasing or building separate lines.³¹ Moreover, it is clear from the *Line Sharing Order* that the Commission intended that its rules would be applied in a manner that would encourage competition and encompass new technologies and technological innovation to the fullest extent.³²

42. Because the ILECs seized on ambiguities to thwart the Commission’s pro-competitive intent, the Commission thereafter issued the *Line Sharing Reconsideration Order*, clarifying (at ¶ 10) that the ILECs’ line sharing obligation extends to the *entire loop*, “*even where the incumbent has deployed fiber in the loop.*” (emphasis added). While the *Line Sharing Order* did address, in part, access to copper facilities, the Commission did not intend that for a CLEC to be restricted to obtaining access to an upgraded loop at the remote terminal. To the contrary, the Commission clarified in the *Line Sharing Reconsideration Order* that a CLEC “must have the option to access [a fiber-fed] loop at either [the remote terminal or the central office], not the one that the incumbent chooses as a result of network upgrades entirely under its own control.” *Line Sharing Reconsideration Order*, ¶ 11. Critically, the Commission held that “it would be inconsistent with the intent of the *Line Sharing Order* and the statutory goals behind

³¹ *Line Sharing Order*, ¶ 39 (recognizing that the inability of a competitor to provide xDSL-based services over the same loop facilities that it uses to provide local voice services makes the provision of competitive xDSL-based services to customers that want a single line for both voice and data applications “not just marginally expensive, but so prohibitively expensive that competitive LECs will not be able to provide such services on a sustained economic basis”), see also *id.*, ¶¶ 33, 40-41.

sections 706 and 251 of the 1996 Act [sic] to permit increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the provision of xDSL services.” *Id.*, ¶ 13.

43. As the Commission has repeatedly recognized, granting CLECs unbundled access to the local loop is *paramount* in the effort to foster local competition. Nothing about the architecture of Project Pronto alters the basic functionality of a loop: to provide transmission functionality needed for a customer to send and receive telecommunications signals between his location and his chosen service provider’s network. As with all network elements, the local loop is defined by its functionality and is not limited to particular services or technologies. The Project Pronto loop architecture now being installed by SWBT provides exactly what the traditional loop has always provided: transmission functionality for telecommunications signals between a customer’s premises and the serving ILEC’s central office. Likewise, the implementation of Project Pronto loop architecture does not change any of the fundamental legal and policy principles that underscore the Commission’s other rules relating to the provision of network elements, including line sharing and subloops.

44. SWBT’s own practices make clear that its hybrid fiber/copper loops, which are being deployed to provide its customers with access to both voice and data services, are not immune from application of these fundamental unbundling principles. For example, SWBT has made it clear that competitors can access DS1 and ISDN loops over Project Pronto facilities. MOPSC Hearing Tr., at 551-552. That determination, although fully consistent with the Commission’s conclusion that loop unbundling obligations necessarily extend to fiber-fed, DLC-equipped, loops,³³ cannot be squared with SWBT’s refusal to provide end-to-end line

³² See *id.*, ¶¶ 1, 4 (adopting measures designed to promote the availability of competitive broadband xDSL-based services, especially to residential and small business customers); *id.*, ¶ 27 (any transmission technology is acceptable for shared-line deployment so long as the technology does not degrade the voice portion of the loop).

³³ See *Local Competition Order*, ¶ 383.

sharing over fiber-fed, DLC-equipped, loops. Pursuant to the Commission's technology- and service-neutrality principles, SWBT's obligation to provide a competitor with unbundled access to hybrid fiber/copper loops at the central office for ISDN services must also necessarily extend to the data telecommunications signals that competitors need to provide DSL services via line sharing over those same loops.

45. One other anomaly in SWBT's reasoning requires attention. One of SWBT's main points is that it believes the line card is not properly regarded as part of a loop -- at least when the loop is requested by a carrier that wishes to engage in line sharing. *See* Chapman MO Aff. ¶ 146, AK Aff. ¶ 146. But SWBT readily acknowledges its duty to provide an unbundled Project Pronto loop to a voice CLEC that wishes to provide voice service. MOPSC Hearing Tr., at 543-544. Yet the line card is as much a part of the transmission pathway for the voice communication as it is for the DSL connection. It simply cannot be that the line card *is* properly part of the loop when the loop is used for voice service but somehow is *not* part of the loop when the loop is used for DSL service.

46. Elsewhere in its Application, SWBT claims that it complies with all of its line sharing obligations because it permits CLECs to access the high-frequency portion of the copper portion of the loop in two ways: (1) by provisioning all-copper loops, where available; and (2) by permitting a CLEC to collocate a DSLAM at or near the central office and utilize dark fiber or fiber feeder subloops. *See* Application at 112-113. SWBT is wrong on both counts.

47. First, SWBT states that it will permit a CLEC to collocate a DSLAM at the remote terminal and provide subloops to allow the CLEC to access the copper wire portion of the loop. *See, e.g.,* Sparks MO Aff., Att. C, Optional Line Sharing Amendment, § 4.1. Notwithstanding the fact that collocation by CLECs at remote terminals "is likely to be costly,

time consuming and often unavailable” (*Line Sharing Reconsideration Order*, ¶ 13), SWBT’s statement provides no indication that SWBT intends to comply with the obligation to provide access to line-shared loops at the central office. The mere fact that subloop unbundling -- which is an *option* available to CLECs -- may be offered has no impact on SWBT’s obligation to provide access to line sharing functionality over “*the entire loop . . . even where the incumbent’s voice customer is served by DLC facilities.*” *Line Sharing Reconsideration Order*, ¶ 10 (emphasis added). As the Commission clearly held:

If our conclusion in the *Line Sharing Order* that incumbents must provide access to the high-frequency portion of the loop at the remote terminal as well as the central office is to have any meaning, then competitive LECs must have the option to access the loop at either location, not the one that the incumbent chooses as a result of network upgrades entirely under its own control.³⁴

48. Second, SWBT cannot satisfy its obligation to provide access to line sharing over a DLC-equipped, fiber fed loop at the central office by permitting CLECs to access spare copper facilities that extend between the central office and the customer’s premises, *i.e.*, “spare copper” or “all-copper loops”. See Application at 112-113. While spare copper loops are available at a competitor’s request, SWBT cannot force CLECs to accept access to spare copper in lieu of the right to an entire line-shared loop equipped with fiber and a DLC. Such an “exchange” would not provide CLECs comparable access to SWBT’s improved network capabilities. Spare copper is not a substitute that assures CLECs will have access to the full capabilities made possible by the use of shorter copper runs and fiber-fed, DLC-equipped loops from remote terminals to SWBT’s central offices.

³⁴ *Line Sharing Reconsideration Order*, ¶ 11; see also *id.*, ¶ 10 (“[w]hen we concluded in the *Line Sharing Order* that incumbents must provide unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office, we did not intend to limit competitive LECs’ access to fiber feeder subloops for line sharing”).

49. When SWBT deploys fiber-fed, DLC-equipped loops, it is virtually impossible for a CLEC to obtain spare copper that will support transmission rates equivalent those obtained on the shorter copper run that terminates in the remote terminal. As indicated in the table below,³⁵ DSL electrical signals necessarily lose their strength over distance. Thus, the longer the copper facility, the weaker the signal strength (and the greater the impact of noise) on that line. The corollary condition is also clear: the shorter the length of the copper facility, the higher the feasible transmission rates. For example, ADSL technologies provide network-to-subscriber data transfer rates as a function of the length of the copper facility employed, as follows:

Data Rate	Distance
1.544 Mbps	18,000 ft.
2.048 Mbps	16,000 ft.
6.312 Mbps	12,000 ft.
8.448 Mbps	9,000 ft.
12.960 Mbps	4,500 ft.
25.920 Mbps	3,000 ft.
51.840 Mbps	1,000 ft.

50. As a result, spare copper will invariably provide transmission speeds, data rates or bandwidth (the terms are synonymous) that are slower than those delivered on the shorter copper subloops that terminate at the ILEC's remote terminal. This reduces transmission capacity that competitors can provide to customers. As the above chart indicates, a 4,500-foot copper segment allows for the transmission of data at a rate more than 8 times faster than an

³⁵ See *General Introduction to Copper Access Technologies*, at http://www.adsl.com/general_tutorial.html (last

18,000-foot copper loop.³⁶ This, in turn, limits the type of services that customers can purchase and imposes a severe marketplace disadvantage on competitors. Thus, CLECs will invariably be unable to provide a DSL service that operates with “the same level of quality” as that provided by SWBT or ASI employing fiber-fed, DLC-equipped loops if the CLECs are constrained to use only the aged, all-copper plant that SWBT finds inadequate for its own purposes.

51. Accordingly, SWBT has not shown that it is providing line sharing to CLECs on hybrid fiber/copper loops, as required by the *Line Sharing Reconsideration Order*.

B. The Commission’s Unbundled Packet Switching Rules Do Not Preclude Unbundling of Project Pronto Network Elements.

52. Even if the Commission finds that the NGDLC architecture deployed by SWBT is subject to the rules regarding “packet switching” when a competitor seeks to access a Project Pronto loop, the unbundling of SWBT’s so called “packet switching” functionality will still be required in virtually all circumstances where SWBT has deployed DSL services over Project Pronto.

53. Specifically, the Commission requires ILECs to unbundle packet switching where the following conditions are satisfied:

- (i) The ILEC has deployed DLCs, including but not limited to, IDLC or UDLIC systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (*e.g.*, end office to remote terminal, pedestal or environmentally controlled vault);
- (ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;
- (iii) The ILEC has not permitted a requesting carrier to deploy a DSLAM at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the carrier obtained a virtual collocation

visited April 23, 2001).

³⁶ Of course, to the extent that the spare copper loop is over 18,000 in length, a CLEC likely will be unable to provide any ADSL service at all.

arrangement at these subloop interconnection points as defined by § 51.319(b); and

- (iv) The ILEC has deployed packet switching capability for its own use.³⁷

54. Contrary to SWBT's assertions (Chapman MO Aff. ¶¶ 120, 147-148, AK Aff. ¶¶ 120, 147-148), these criteria have been satisfied when SWBT deploys Project Pronto in Missouri and Arkansas. This is exactly the determination reached in both Texas and Illinois.³⁸ Paragraph 313 of the *UNE Remand Order* simply provides no basis to deny CLECs access to Project Pronto UNEs.

55. The first Commission criterion -- that an ILEC actually deploy a DLC system or introduce fiber into the distribution plant -- is obviously met. There is no question that SWBT is deploying NGDLC throughout its network in Missouri and Arkansas. Based on SBC's filings, the Commission characterized Project Pronto as relying in "large part upon the increased use of Digital Loop Carrier (DLC) systems to reduce overall costs."³⁹ This criterion applies to all DLC systems, not simply those systems that SWBT has opted to upgrade. Thus, the Commission's first criterion of the packet switching rule has been satisfied.

56. The second Commission prerequisite to the unbundling of "packet switching capability" is the lack of spare copper facilities that are "capable of supporting the xDSL services the requesting carrier seeks to offer,"⁴⁰ and that permit the CLECs to offer "the

³⁷ 47 C.F.R. § 51.319(c)(5); *UNE Remand Order*, ¶ 313.

³⁸ *Petition of IP Communications to Establish Expedited PUC Oversight Concerning Line Sharing Issues, Petition of Covad et al Against SWBT for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions and Related Arrangements for Line Sharing*, Texas PUC Docket Nos. 22168, 22469, Arbitration Award at 75-80 (July 13, 2001) (Texas Arbitration Award); *Illinois Bell, Proposed Implementation of High Frequency Portion of Loop (HFPL) Line Sharing Service*, Ill PUC Docket No. 00-393, Proposed Order on Rehearing at 32-33 (Aug. 10, 2001) (Illinois Proposed Order).

³⁹ *Application of Ameritech Corp. and SBC Communications for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, Second Memorandum and Order, ¶ 4 (rel. August 9, 2000) (*Project Pronto Waiver Order*).

⁴⁰ 47 C.F.R. § 51.317(c)(5)(ii).

same level of quality for advanced services” as that offered by the ILEC (or its data affiliate). *UNE Remand Order*, ¶ 313. SWBT argues that the second Commission prerequisite for requiring unbundled access to packet switching, (*i.e.*, that “no spare copper loops” are available) will not be met because all-copper loops will often be available to the CLECs and that, at a minimum, this “analysis will depend upon a case by case analysis, depending upon the desired technology and the length of the copper loop for a specific arrangement.” Chapman MO Aff. ¶ 147, AK Aff., ¶ 147. This argument is incorrect for several reasons.

57. As a threshold matter, SWBT’s “all-copper” loop alternative is neither ubiquitous nor permanent. SWBT has acknowledged that the purpose of Project Pronto is to overcome loop length issues that result from the traditional copper loop network. MOPSC Tr. at 548-49. With Project Pronto, loop lengths are shortened to 12,000 feet or less, which allows SBC to offer broadband xDSL services to 20 million additional customers. *See Project Pronto Waiver Order*, ¶ 4. In contrast, CLECs are permanently foreclosed from providing DSL services to these customers using SWBT’s all-copper loop alternative because of excessive loop lengths or other network conditions. Similarly, in new areas of growth where only Project Pronto is deployed, CLECs will not be able to access “all-copper” loops. MOPSC Tr. at 552-53. In those areas, SBC takes the position that there is no unbundled DSL capable loop from the central office to the end-user. MOPSC Tr. at 628-29. Also, there is no assurance that all-copper loops will be preserved and maintained indefinitely. MOPSC Tr. at 305, 602-03.

58. In addition, the mere availability of an all-copper loop -- instead of the upgraded loops that are available to SWBT and its affiliate -- does not discharge SWBT’s unbundling obligations associated with its Project Pronto architecture. As noted above, the physical characteristics of spare copper will almost never enable a CLEC to match the service

capabilities that SWBT (and its affiliate) are able to offer over its upgraded loop architecture. Thus, the mere availability of spare copper will not discharge SWBT's unbundling obligations, because CLECs will not be able to use those facilities to "support[] xDSL services the requesting carrier seeks to offer," *i.e.*, at least the same services that SWBT and its affiliate can make available to the same customer. *See* 47 C.F.R. § 51.319(c)(5)(ii). Moreover, requiring CLECs to make a line-by-line showing that the "all copper loop" does not provide the same level of quality of advanced services that SWBT and its affiliates provide over Project Pronto is unduly burdensome. Certainly, the Commission has enough factual evidence to find that, as a general matter, the use of all-copper loops to provide xDSL services provides CLECs with an inferior option that SWBT itself is spending billions of dollars to avoid.

59. The Commission's third criterion provides that an "incumbent will be relieved of [its] unbundling [packet switching] obligation only if it permits a requesting carrier to collocate its DSLAM *in* the incumbent's remote terminal, *on the same terms and conditions that apply to its own DSLAM.*" *UNE Remand Order*, ¶ 313 (emphasis added); *see also* 47 C.F.R. § 51.319(c)(5)(iii). The Commission also notes that ILECs "may not unreasonably limit the deployment of alternative technologies when requesting carriers seek to collocate their own DSLAMs in the remote terminal." *UNE Remand Order*, ¶ 313.

60. SWBT claims that it allows collocation of DSLAMs at any technically feasible interconnection point. Chapman MO Aff., ¶ 147, AK Aff., ¶ 147. SWBT, however, does not permit CLECs to deploy DSLAMs in remote terminals in a nondiscriminatory manner. The physical, technical and economic limitations associated with SWBT's vague RT-based collocation alternative make clear that competitors will rarely, if ever, be permitted to collocate an ADLU line card in an SWBT remote terminal on a nondiscriminatory basis. Indeed, the

Commission has already found that CLEC collocation of DSLAMs is problematic: “[a]ll indications are that fiber deployment by incumbent LECs is increasing, and that collocation by competitive LECs at remote terminal is likely to be costly, time consuming, and often unavailable.” *Line Sharing Reconsideration Order*, ¶ 13.

61. In Texas and Illinois, decisionmakers have already determined that SBC has designed Project Pronto in a manner that denies competitors the ability to collocate DSLAMs at remote terminal. Texas Arbitration Award, at 72; Illinois Proposed Order, at 33. In Texas, for example, the Arbitrator indicated that

the simple fact that SWBT has hardwired its equipment at the RT and DLECs will be forced to pay for a work-around or to build adjacent collocation space supports a finding that SWBT cannot meet its burden to be relieved of its unbundling obligation. In sum, the evidence presented to the Arbitrators indicates that collocating a DSLAM at the RT will in most cases not only provide to be uneconomical, but also technically problematic. Texas Arbitration Award, at 72.

Accordingly, because SBC has designed Project Pronto in a uniform fashion throughout its thirteen-state region, SWBT’s remote terminal alternatives in Missouri and Arkansas satisfy the third condition of the *UNE Remand Order*.

62. Finally, SWBT argues that it does not meet the fourth criterion for unbundled “packet switching” – that the “incumbent LEC has deployed packet switching capability for its own use.” 47 C.F.R. § 51.319(c)(5)(iv). Putting aside the fact that none of the equipment used in the remote terminal provides a switching or routing function, SWBT claims that this condition does not apply to Project Pronto because the packet switching will not be for SWBT’s use but only for CLECs’ use. Chapman MO Aff., ¶ 147, AK Aff., ¶ 147. This claim is absurd. SWBT’s parent, SBC, is clearly deploying Project Pronto for its own benefit and explicitly because it believes that it can achieve substantial cost savings by doing so. For

example, SBC has described Project Pronto as “an unprecedented, \$6 billion initiative . . . to transform the company . . . into the largest single provider of advanced broadband services in America,”⁴¹ and it has told investors it expects Project Pronto to generate \$3.5 billion in new annual revenues by 2004.⁴² Nowhere in SBC’s announcement of Project Pronto did it claim or imply that the project was undertaken only for CLECs’ use, as SWBT now claims.

63. SWBT may be relying on the fact that xDSL services will not be provided by SWBT but by its data affiliate. Clearly, SWBT proposes to use Project Pronto even if only to provide service to its new affiliate. The U.S. Court of Appeals for the District of Columbia Circuit and the Commission have already addressed the absurdity of this position. In particular, SWBT’s argument necessarily rests on precisely the conduct ruled unlawful by the D.C. Circuit in *ASCENT* -- the use of an affiliate to avoid Section 251(c) obligations. As the *ASCENT* court made clear, data affiliates of ILECs are subject to all obligations of Section 251(c)(3) of the Act.⁴³ Similarly, the Commission recently concluded, in light of the *ASCENT* decision, that an ILEC’s 251(c) obligations extend to its affiliate, whether it continues to exist as a separate entity or whether it is integrated into the ILEC.⁴⁴

64. In all events, even if the Commission finds that SWBT’s Project Pronto architecture contains “packet switching” functionality, which it does not, SWBT must unbundle these capabilities in all circumstances where it has deployed fiber-fed, DLC-equipped loops,

⁴¹ SBC Press Release, SBC Launches \$6 Billion Initiative to Transform it Into America’s Largest Single Broadband Provider (Oct. 18, 1999).

⁴² SBC Investor Briefing, SBC Reports Strong Revenue and Earnings Growth for Fourth Quarter, Full-Year 1999 (Jan. 25, 2000), at 3.

⁴³ *ASCENT*, 235 F.3d at 668 (“the Act’s structure renders implausible the notion that a wholly owned affiliate providing services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent”).

⁴⁴ See *Application of Verizon New York Inc. et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Connecticut*, Memorandum and Order, CC Docket No. 01-100, FCC 01-208, ¶¶ 28-33 (rel. July 20, 2001).

pursuant to the criteria set forth in the Paragraph 313 of the *UNE Remand Order*. Until it does so, SWBT plainly has not fulfilled its checklist obligations.

C. SWBT's Broadband Service Offering Does Not Provide Competitors With Unbundled Access to Line Sharing in the Manner Contemplated by the Line Sharing Reconsideration Order.

65. SWBT claims that competitors are free to use a “broadband service offering” (Application at 114, Chapman MO Aff., ¶¶ 128-141, AK Aff., ¶¶ 128-141) to provide advanced services to end users. In doing so, SWBT implies that this offering, which is a resale service, can somehow obviate SWBT’s obligation to provide line sharing over hybrid fiber/copper loops. It is wrong. SWBT’s resale offering does not provide competitors with unbundled access to line sharing in the manner contemplated by the *Line Sharing Reconsideration Order*. SWBT’s willingness to offer these services is essentially an admission that CLECs need access to the functionalities of the entire unbundled loop in the NGDLC architecture, but access via a “broadband service” does not comport with the mandate of section 251(c)(3) to provide unbundled network elements on a nondiscriminatory basis.⁴⁵

66. The Commission has long recognized that the 1996 Act provides several methods for competitors to enter the local telecommunications marketplace. All of these mechanisms must be available to competitors. The availability of one entry mechanism such as a resold “service” is not an alternative to a UNE.⁴⁶ Indeed, the Commission has explicitly held that “allowing incumbent LECs to deny access to unbundled elements solely, or primarily, on the grounds that an element is equivalent to a service available at resale would lead to impractical

⁴⁵ Likewise, the *Project Pronto Waiver Order* is not relevant to the Commission’s determination regarding SWBT’s unbundling obligations with respect to Project Pronto. That order is narrowly confined to issues regarding the ownership of ADLU cards and OCDs under the SBC/Ameritech Merger Conditions. *Project Pronto Waiver Order*, ¶ 2 (“[o]ur interpretations and conclusions with respect to the Merger Conditions do not relieve SBC of any obligations under sections 251, 252, or any other provision of the Communications Act of 1934, as amended (the Act) and our implementing rules. Nor do we intend the analysis or conclusions in this Order to constrain or otherwise affect our interpretation of those rules”); *see also id.*, ¶ 9.

results; incumbent LECs could completely avoid section 251(c)(3)'s unbundling obligations by offering unbundled elements to end users as retail services.”⁴⁷

67. Even though SWBT boasts that its broadband service offering creates new business opportunities for CLECs (Chapman MO Aff., ¶¶ 139-141, AK Aff., ¶¶ 139-141), SWBT has, in fact, created a resale offering that provides little, if any, incentive for competitors to take the service. For example, unlike unbundled network elements, SWBT's “broadband service” must be taken “as is” – meaning that a CLEC will be unable to add new features and functions that SWBT does not already include in the service. Thus, a CLEC purchasing “broadband service” will be unable to differentiate the “broadband service” that it offers from that offered by other LECs in the competitive marketplace. SWBT is the sole gatekeeper determining what features and capabilities it will deploy, regardless of any collaborative sessions it holds with CLECs pursuant to the Commission's merger conditions. This puts CLECs at a distinct competitive disadvantage.

68. In addition, there is no ongoing statutory obligation to provide access to a “broadband service.” In fact, SWBT's broadband service is, at best, a limited time offer that can be unilaterally withdrawn by SWBT at any time.⁴⁸ No CLEC can build a business plan on a service that SWBT can simply make disappear. In its unbundling analysis, this is the very problem that the Commission sought to prevent. *UNE Remand Order*, ¶ 114. A service that can be withdrawn, and which is not subject to all of the rules that attend unbundled network

⁴⁶ *Local Competition Order*, ¶ 12; *UNE Remand Order*, ¶¶ 5, 67; see also *Iowa Utils. Bd. v. FCC*, 120 F.3d at 809.

⁴⁷ *UNE Remand Order*, ¶ 67; *Iowa Utils. Bd. v. FCC*, 120 F.3d at 809 (“[w]hile subsection 251(c)(4) does provide for the resale of telecommunications service, it does not establish resale as the exclusive means through which a competing carrier may gain access to such services. We agree with the FCC that such an interpretation would allow the incumbent LECs to evade a substantial portion of their unbundling obligation under subsection 251(c)(3)”).

⁴⁸ See SWBT's Standard Broadband Service Offering Contract, § 31 (https://clec.sbc.com/1_common_docs/interconnection/multi/standalone/Services/Broadband%20Service%20Stand-Alone%20Agreement.doc).

elements, including, but not limited to, a duty to negotiate in good faith and TELRIC pricing, cannot cure SWBT's inability to comply with its unbundling checklist obligations.

D. SWBT's Project Pronto Initiative Will Not Be Impaired by the Commission's Enforcement of Its Existing Statutory Unbundling Requirements.

69. SWBT also claims that any decision by the Commission requiring it to provide CLECs with end-to-end line sharing over hybrid fiber/copper loops will discourage investment in Project Pronto architecture. *See* Chapman MO Aff., ¶¶ 151-154, AK Aff., ¶¶ 151-154. SWBT's threat to halt deployment of Project Pronto if required to unbundle is not credible for several reasons.

70. First, SWBT's argument ignores the overall importance of the next-generation loop architecture in SBC's overall service plans. SBC has made it clear in real-world contexts that it intends to meet ever-increasing consumer demand for voice and high-speed data services over a single line. For example, SBC Chairman Edward Whitacre has boasted that, once Project Pronto is completed, "*only SBC will have all the pieces*" needed to provide the range of services that consumers want and expect.⁴⁹ The deployment of Project Pronto also enhances SBC's ability (and the ability of its affiliates) to meet growing consumer demand by introducing more services to more customers across its thirteen-state region. For example, SBC has indicated that it expects:

its broadband initiative to dramatically improve its ability to deeply penetrate the growing market opportunity for broadband services, especially in the consumer and small and medium business markets. DSL services alone are targeted to add approximately \$3 billion to annual revenue within the next five years with another \$500 million coming from other new or

⁴⁹ SBC Investor Briefing, SBC Reports Strong Revenue and Earnings Growth for Fourth Quarter, Full-Year 1999, (Jan. 25, 2000), at 4 (quoting Whitacre) (emphasis added). Whitacre explained, "by converting the 'last mile' into a high speed 'first mile' on ramp to the Internet, we are making nearly all of our 60 million access lines more powerful for customers and more valuable to shareholders Project Pronto together with our expanding service footprint and plans to provide long distance service, is an integral part of our plan to be a full service, global provider and the only communications company our customers need." *Id.* at 2.

replacement products. This \$3.5 billion revenue opportunity represents an additional 100 basis points in top-line growth by 2004.⁵⁰

71. SBC has also indicated that the deployment of Project Pronto will give it “the flexibility to readily move to other voice protocols, including voice over ATM, voice over ADSL and, ultimately voice over IP.” *Id.* at 2. According to SBC, the deployment of Project Pronto also enables other products such as distance learning, video conferencing, remote management, web hosting and server hosting. *Id.* at 8-9. Finally, an additional \$500 million net revenue opportunity by 2004 is targeted for products like switched virtual circuits, voice over DSL, and VPOP-DAS. *Id.* at 9. It is difficult to believe that SBC will not continue deployment of Project Pronto to realize the revenue possibilities of this network improvement.

72. Second, SBC’s network efficiency claims directly contradict SWBT’s statements to the Commission that it will discontinue deployment of Project Pronto. SBC states in its *Investor Briefing* that it will attain “annual savings of \$1.5 billion by 2004” and that the “capital and expense savings pay for initiative on NPV basis.” *Id.* at 7. The *Investor Briefing* describes the dramatic impact that deploying Project Pronto will have on the cost structure of the network. In particular, SBC indicates that it expects to realize expense savings because the fiber it is deploying is much more efficient than the copper it is replacing from a maintenance standpoint and with fiber, “the cost of providing additional bandwidth via electronics will be significantly less than adding more copper lines.” *Id.* at 7.⁵¹ All of these facts fly directly in the face of SWBT claims that it may stop upgrading the network from which SBC expects huge expense and capital efficiencies.

⁵⁰ SBC Investor Briefing, *SBC Announces Sweeping Broadband Initiative*, at 7-8 (October 18, 1999) (*Project Pronto Investor Briefing*).

⁵¹ SBC also intends to realize capital expenditure savings for feeder, trunking and provisioning of \$600 million annually by 2004 as a result of its network upgrades. *Id.*

73. Indeed, there has always been a fundamental inconsistency between the SBC's dire predictions and its representations to the financial community. According to SBC's statements to investors, "[d]ata and broadband services comprise SBC's most powerful growth driver."⁵² In the next breath, however, SWBT argues that if the Commission follows the law and its own precedent here it will cause SBC to possibly cancel the installation of DSL-capable Pronto facilities.⁵³ It defies all business logic for SBC to put an end to further enhancements in the network that will support its "most powerful growth driver." SBC's threats are likewise directly contrary to the advice it provided to the investment community that "[t]he network efficiency improvements alone pay for this [Project Pronto] initiative, leaving SBC with a data network that will be second to none."⁵⁴

74. Third, there is little, if any, additional cost associated with providing end-to-end line sharing – or line splitting -- that AT&T has requested. Of course, cost is not the issue. In Illinois, SBC's Chief Technology Officer admitted under cross-examination that SBC would have suspended Project Pronto even if the cost to comply with the Illinois Commission's order was zero.⁵⁵ SWBT is not truly concerned about cost; it wants to leverage control of its bottleneck assets to extend that monopoly into other telecommunications services, such as DSL. In other words, it was foreordained that any steps that state commission take to promote DSL

⁵² SBC Investor Briefing, *SBC Outlines Action Plans for 2001*, at 2 (Dec. 19, 2000).

⁵³ Chapman MO Aff., ¶¶ 151-154, AK, Aff. ¶¶ 151-154. SWBT's claim regarding SBC/Ameritech's holdback in deploying next-generation architecture in Illinois is simply grandstanding and gamesmanship. To be sure, according to SBC, it "continues to make good progress with Project Pronto, ... [which] pushes fiber deeper into neighborhoods and to the doorsteps of businesses so that more customers can benefit from high-speed Internet access and other applications." SBC Investor Briefing, *SBC Updates Progress in Major Growth Drivers, Reaffirms Target of 11-14 Percent Earnings Per Share Growth in 2001*, at 2 (Mar. 1, 2001) ("[a]t the end of February, 21 million of SBC's customer locations were DSL-capable, compared with 12.9 million at the end of the first quarter of 2000").

⁵⁴ *Project Pronto Investor Briefing* at 2.

⁵⁵ *Illinois Bell, Proposed Implementation of High Frequency Portion of Loop (HFPL) Line Sharing Service*, Ill. PUC Docket No. 00-393, Hearing Tr. 307-308.

competition were going to – and will continue to – be met with a claim by SBC that those steps would be too expensive.

75. The Commission should, therefore, dismiss any notion that SBC investment in Project Pronto facilities would end if the Commission enforced the existing statutory unbundling obligations. In contrast, however, any failure to enforce existing loop unbundling obligations will serve only to severely slow, if not stop, CLEC investment in advanced telecommunications services. Without access to end-to-end line sharing over hybrid fiber/copper loops, CLECs cannot be assured of having access to all of their customers' telecommunications signals. For this reason, the Commission recognized that "[w]ithout access to these loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced [telecommunications] services."⁵⁶ CLECs must be able to utilize the unbundled loop element to access their customers to provide any service of their choice. The inability to access the entire next-generation loop architecture based on the SWBT's efforts to place service-based restrictions on it forecloses any competitive ability to construct market entry plans and, as a result, prevents the development in competition for all telecommunications services and further solidifies SWBT's dominance in these services.

CONCLUSION

76. SWBT falls far short of demonstrating compliance with its obligations relating to advanced services. Notwithstanding SWBT's attempt to portray ASI as largely a wholesaler of DSL transport, it is clear that SWBT and ASI have failed to comply with the requirements of Section 251(c), including their obligation to offer for resale at a wholesale


⁵⁶ *UNE Remand Order*, ¶ 190 ("[u]nbundling basic loops, with their full capacity preserved, allows competitors to provide xDSL services").

discount under Section 251(c)(4) the DSL Transport services that SWBT itself has made available as a stand-alone service at retail to business and residential end-users. Moreover, SWBT has not shown that it is providing line sharing to CLECs on fiber-fiber loops, as required by the *Line Sharing Reconsideration Order*.

DC1 503172v1 September 10, 2001 (01:03pm)

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on September 10, 2001


Scott L. Finney

Attachment 1